

Summary of SC95055, *Harry Fischer v. Director of Revenue*

Appeal from the administrative hearing commission, Commissioner Nicole Colbert-Botchway

Argued and submitted December 9, 2015; opinion issued March 15, 2016

Attorneys: Fischer, of Elkader, Iowa, represented himself; the director was represented by Solicitor General James R. Layton and Linda Lemke of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man seeks review of the administrative hearing commission's decision upholding the director of revenue's determination about the man's 2007 income tax liability. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the commission's decision. The director properly applied the relevant statute and correctly assessed additions and interest. The director also properly did not apply any overpayment credit until 2009, when the man finally filed his 2005 and 2006 returns and the director was able to ascertain the amount of the overpayment credit.

Facts: Harry Fischer timely requested an extension of time to file his 2004 tax return, enclosing a payment of \$2,000. His new deadline was in August 2005, but he did not file it until February 2007. His 2005 and 2006 returns were due in April 2006 and April 2007, respectively, but he did not file either until March 2009. After receiving the 2005 and 2006 returns in March 2009, the director imposed an addition and interest because they were late, then applied Fischer's overpayment credit from 2004 to his 2006 tax liability, leaving him with an overpayment credit. Fischer did not file his 2007 return – which had been due in April 2008 – until June 2011. The director applied the overpayment credit toward the taxes owed and, because the return had been filed late, imposed an addition, a penalty and interest. By October 2011, Fischer had paid only half of the amount the director determined he owed, and so the director sent a final notice of deficiency and additional interest imposed. Fischer filed a timely protest regarding just his 2007 income tax liability. In February 2013, the director issued a final decision regarding the amount Fischer still owed. He appealed to the administrative hearing commission, which affirmed the director's decision. He now seeks this Court's review.

AFFIRMED.

Court en banc holds: The director properly applied section 143.731, RSMo, by assessing interest against the total amount of Fischer's tax liability beginning in April 2008 and not crediting his 2006 overpayment credit to reduce that principal amount until March 2009, when Fischer filed his 2006 return and the amount of his 2006 overpayment credit first could be ascertained.

The plain language of section 143.741 requires the director to assess an addition to tax whenever there is a failure, not due to reasonable cause, to file a timely return. Fischer neglected to file his 2007 return for more than three years and does not claim he had reasonable cause for this delay. Accordingly, the director was correct in assessing a 5-percent-per-month addition, capped at 25 percent – to Fischer's 2007 income tax liability beginning in April 2008 when that return was due. At that time, the director did not know whether Fischer would have an overpayment credit because he had not yet filed his 2005 and 2006 returns – and did not file them for almost another year. By the

time his 2005 and 2006 returns were filed in March 2009, the full 25 percent addition had been assessed under section 143.741.1.

Further, section 143.741 required the director to impose interest on the amount of tax actually owed from the date the return was due to be filed until the tax is paid in full. Accordingly, the director properly assessed interest on the entire amount of taxes Fischer owed for 2007 beginning in April 2008, when they first were owed. For the reasons explained above, this principal amount could not be reduced by his overpayment credit until Fischer filed his 2005 and 2006 returns in March 2009.